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Federal Communications Commission  
Office of Secretary

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WT Docket No. 96-6

The National Telephone Association (“NTCA”) submits these Comments in response to the Commission’s Further Notice of Proposed Rulemaking (“*Further Notice*”), FCC 96-283, released on August 1, 1996.<sup>1</sup> On August 1, the Commission adopted rules allowing licensees operating in the Commercial Mobile Radio Service (CMRS) bands to offer fixed services over CMRS spectrum but requested additional comment on the regulatory treatment of fixed services that are not considered ancillary, auxiliary or incidental to mobile service. It does not propose to change the rules governing fixed service ancillary, auxiliary or incidental to the provision of mobile operations. It does however, propose to establish a presumption that licensees offering

<sup>1</sup> *In re* Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *First Report and Order and Further Notice of Proposed Rule Making* in WT Dkt. No. 96-6, FCC 96-283 (August 1, 1996).

NTCA --

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other fixed services over CMRS spectrum should be regulated as CMRS subject to 47 U.S.C. § 332 and therefore exempt from states' regulation of intrastate rates.

NTCA is a national association of approximately 500 local exchange carriers ("LECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural and small-town America. NTCA's members, which are the leading suppliers of local exchange services in most rural areas of our country, favor making spectrum based services available for the provision of local service. However, NTCA believes regulatory parity is an important principle that should be applied to all providers of local service regardless of technology.

In the *Further Notice*, the Commission proposes to adopt a mechanism to resolve regulation of fixed CMRS issues on a case-by-case basis employing a rebuttable presumption that any wireless service provided under a CMRS license would be considered to fall under the definition of CMRS and regulated as CMRS.<sup>2</sup> Any interested party could challenge the presumption with evidence that demonstrates that the service provider does not meet the definition of CMRS for a particular offering. The Commission also suggests the types of evidence a party can show when making the challenge. It proposes the following as possible factors to determine whether a service should be regulated as CMRS: "the relative mobility of mobile stations used in conjunction with the fixed service; whether the fixed service is part of a large package which includes mobile services or is offered alone; the size of the service area over

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<sup>2</sup> In the current *Notice*, the Commission maintains its position that the Basic Exchange Telephone Radio Service (BETRS) should be regulated as a fixed service even though it is provided in spectrum allocated for CMRS. *Further Notice*, para. 52. NTCA agrees with the Commission on this point.

which the fixed wireless service is provided; the amount of mobile versus fixed traffic over the wireless system; whether the fixed service is offered over a discrete block of spectrum separate from the spectrum used for mobile services; the degree to which fixed and mobile services are integrated; and whether customers perceive the service to be a fixed service." The Commission added that part of the customer perception analysis "may also include consideration of how the service is marketed by CMRS providers."<sup>3</sup>

NTCA opposes the rebuttable presumption approach that assumes any wireless service provided on CMRS spectrum should be regulated as CMRS. The rebuttable presumption will have the effect of favoring wireless service over wireline. Already, under Section 251(c) of the Telecommunication Act of 1996, local exchange carriers are heavily burdened with interconnection obligations that do not apply to CMRS providers. Besides being subject to these obligations that favor competitors like CMRS providers, LEC wireline providers are subject to state rate regulation of their retail rates. Also, if the FCC adopts recent recommendations by the Joint Board, CMRS providers will qualify as eligible carriers but have none of the state obligations associated with the carrier of last resort.<sup>4</sup> These additional burdens and obligations create asymmetrical regulation that defeat principles of regulatory parity and "competitive neutrality."<sup>5</sup> Instead of tilting the balance toward one type of fixed service, the FCC should take

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<sup>3</sup> *Further Notice*, para 54.

<sup>4</sup> *In re Federal-State Joint Board on Universal Service, Recommended Decision* in CC Dkt. No. 96-45, FCC 96J-3 (November 8, 1996).

<sup>5</sup> *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order* in CC Dkt. No. 96-98, FCC 96-325 (August 8, 1996)("Local Competition Order"). "We . . . believe that sections 251 and 252 will foster regulatory parity in that these provisions establish a uniform regulatory scheme governing

steps to ensure that providers of local exchange access are regulated in a manner that does not favor one type of technology or group of competitors over another. Further, in rural areas, the rebuttable presumption will require rural companies to expend resources on the administrative costs and research necessary to challenge the presumption. In a competitive environment, rural companies should not have to engage in costly proceedings to ensure regulatory parity, a principle that should exist unequivocally.

NTCA also opposes the suggested approach which would enable fixed CMRS to be treated as CMRS until it becomes a substitute for the landline local telephone exchange under Section 332(c)(3). Under this approach, the state would decide a fixed wireless service provider constitutes a substitute for landline telephone exchange in a substantial portion of the state. After the state determination, the Commission must grant a state's petition before the CMRS provider's fixed service would be subject to that state's regulation. NTCA believes this procedure would be administratively cumbersome and too costly.

Moreover, the presumption approach would disadvantage wireline carriers. In the potentially long period before the Commission grants a state's petition, the fixed wireless provider maintains a regulatory advantage over the wireline service provider which is contrary to the Commission's "competitive neutrality" policy precluding it from favoring one group of "telecommunications carriers" over another. Rural telephone companies serving small areas in a

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interconnection between incumbent LECs and all requesting carriers, *including CMRS providers.*" *Id.* para. 1024 (emphasis added). NTCA believes it would be inconsistent for the FCC to show concern for regulatory parity between LEC and CMRS providers in the Local Competition Order and then adopt an order that defeats principles of regulatory parity between these providers in the instant WT 96-6 proceeding.

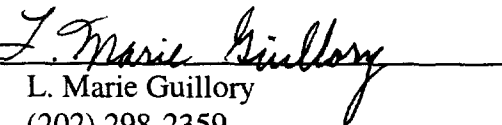
state with wireline would always be at a disadvantage vis a vis large CMRS providers that would be free to cream skim large customers.

For the above stated reasons, NTCA recommends that the Commission adopt rules that take cognizance of the need to treat similar services similarly and that do not favor providers on the basis of technology.

Respectfully submitted,

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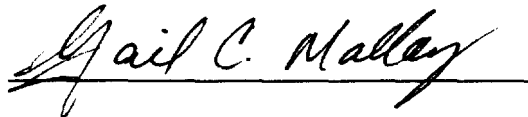
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November 25, 1996

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT Docket No. 96-6 was served on this 25th day of November 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

A handwritten signature in cursive script, reading "Gail C. Malloy", is written over a horizontal line.

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